

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BIDZIRK, LLC, DANIEL G. SCHMIDT,)	
III, and JILL PATTERSON,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 6.06-CV-109-HMH
)	
PHILIP J. SMITH,)	AMENDED COMPLAINT
)	
Defendant.)	Jury Trial Demanded

COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III (“Schmidt”) and Jill Patterson (“Patterson”), Plaintiffs in the above-captioned action, and make and file this their amended complaint, and show the Court as follows:

FOR A FIFTH CAUSE OF ACTION- Defamation

37.

Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1-36 of their original complaint as though set forth fully herein.

38.

The Court may exercise jurisdiction over Plaintiffs’ claim for defamation through the Court’s inherent supplemental jurisdiction.

39.

Since Plaintiffs' initial complaint was filed, Defendant published and continues to display statements on his blog that tend to impeach the honesty, integrity, virtue or reputation of Plaintiffs, which caused and continue to cause injury to Plaintiffs' business or profession. Defendant's publication alleges that Plaintiffs improperly tampered with Google.com search results to prevent internet users from viewing Defendant's article. See Exhibit 1.

40.

Plaintiffs own and operate a well-known company in Greenville and other areas, and enjoy a strong reputation for fair dealing.

41.

Defendant's statements were published with actual or implied malice, and with the intent wantonly to injure Plaintiffs in their business or profession.

42.

Defendant's statements are false, and were published on the internet, at a publicly-accessible website, www.jackwhispers.blogspot.com, during May 25, 2006 and thereafter.

43.

Plaintiffs have suffered and are entitled to recover special damages in an amount to be proved at trial, and have suffered damages in the form of embarrassment, humiliation and mental injury as a result of the injury to his reputation inflicted by Defendant's publication of defamatory statements.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

WHEREFORE, BidZirk, Schmidt and Patterson pray:

- (a) that Plaintiffs have judgment against Defendant for defamation as set forth in Count V of their amended complaint , in an amount to be proven at trial;
- (b) that all costs of this action be cast upon Defendant;
- (c) for a trial by jury; and
- (c) for such other and further relief as the Court deems mete and just.

This 5th day of June, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL
USDC Bar No. 9706

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LLC, Daniel G. Schmidt, III and Jill
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EXHIBIT 1

“SERMA Gives Others Goose Bumps On The Derma”

A MySpace comment in response to my post on SERMA (Search Engine Reputation Management) yesterday:

SERMA and Silencing the Consumer

I read your blog on SERMA and thank you for posting it. I had a similar experience. My website, the Toonces Project, publicized the State Veterinary Board's findings against a veterinarian who was found guilty of wrongdoing in a case involving my cat. The findings are a matter of public record. For the first month or so my site was coming up on the first page of searches for the vets name, the hospital name, and the term veterinary malpractice. Now it does not come up at all anywhere searching for those terms. It hasn't been removed by Google, because if you search "The Toonces Project" it still comes up, also it still comes up on Yahoo. Also, the search results that come up when you search my name have been reorganized in a way that I'm sure someone else might think is negative. I know the search results are being manipulated.

I'm not sure what consumers who have turned to the internet as a way to share information -- including negative information -- about businesses are going to do if the internet ends up being owned by business.

This is where it is heading

Can we "OUT SERMA" SERMA? If we feel we are being SERMA'd what can we do?

I just applied to be your friend. Read my blog on veterinary malpractice, and visit my now-unsearchable on Google site, the toonces project at www.thetooncesproject.com

I went to the website and found the following:

Dr. Marc Katz, DVM, of The Kindness Animal Hospital in Wheaton, Maryland

**Found in Violation of the Veterinary Practice Act by the MD State Board of
Veterinary Medical Examiners**

Veterinary License Suspended (suspension stayed)

Six Months Probation Effective 2/03/2006

Honestly, the best way to beat a SERMA'd site is to do what I have just done. My site is 3 million slots higher than your site ... so ... maybe putting it here will get these terms back into a search.

I posted to the Google Groups board in hopes that Google would respond. It usually takes them 3-4 weeks as I posted about a different but related topic before.

Further, my investigation turns up that this is most likely legal **BUT** they are most likely using illegal methodology to perform the function of censoring or "pushing". I believe they have a "gateway" page which is specifically forbid by Google.

The other thing you can do is change the wording and rearrange the wording of the website and article as it appears that they target specific layouts.

One former hospital marketing department executive that I showed this (SERMA) to was absoulutely stunned. She said it has so many implications for spin control on so many levels. Doctors could suppress malpractice, politicians could suppress "unethical" behaviour

My biggest beef in my particular instance is that I had a federal district court rule that my article could stay up on the internet and **Bidzirk** removed it any way (as best they could) ... which may be a violation of court order.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing AMENDED COMPLAINT upon the following parties by depositing same in the United States Mail in a properly-addressed envelope with adequate postage affixed to:

Philip J. Smith
601 Cleveland Street
Apartment 5-C
Greenville, South Carolina 29601

This 5th day of June, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL
USDC Bar No. 9706

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